

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**48 CFR Part 1815****Waiver of Submission of Cost or Pricing Data for Acquisitions With the Canadian Commercial Corporation and for Small Business Innovation Research Phase II Contracts**

AGENCY: Office of Procurement, Contract Management Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This rule amends the NASA Federal Acquisition Regulation Supplement (NFS) to provide a class waiver from the FAR 15.403-4 requirement for the submission of cost or pricing data for Small Business Innovation Research (SBIR) program Phase II contracts. A waiver is permitted by FAR 15.403-1(c)(4). The rule also deletes the end date for the existing waiver of the submission of cost or pricing data for acquisitions with the Canadian Commercial Corporation (CCC). In addition, this rule clarifies that assurances of price fairness and reasonableness by the CCC should be relied on, but that contracting officers are to ensure that the appropriate level of information other than cost or pricing data is submitted by subcontractors to perform any required proposal analysis, including a technical analysis and a cost realism analysis.

EFFECTIVE DATE: March 5, 1999.

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SUPPLEMENTARY INFORMATION:**Background**

FAR 15.403-4 requires that cost or pricing data be submitted for contract awards and modifications in excess of \$500,000 unless one of the exceptions at FAR 15.403-1(b) apply. One of the exceptions listed there are waivers granted under FAR 15.403-1(c)(4). Waivers may be granted under FAR 15.403-1(c)(4) by the head of the contracting activity if the price can be determined to be fair and reasonable without the submission of cost or pricing data.

NASA SBIR Phase II contract awards, which are generally limited to \$600,000, do not meet the FAR 15.403-1(b) adequate price competition, prices set by law or regulation, or commercial item exceptions. However, a class waiver is considered to be in the

Government's interest to promote maximum small business participation in the SBIR program and increase the number of small businesses participating in Federal R&D contracts. The Government's payment of fair and reasonable prices under SBIR Phase II contracts is ensured without the submission of cost or pricing data by (i) contracting officers having access to adequate information in the offerors' proposals; (ii) Phase II proposals being subjected to multiple technical reviews; and (iii) contracting officers having the ability under FAR 15.403-5(a)(3) to request information other than cost or pricing data if additional information is needed.

A class waiver for SBIR Phase II contracts would result in consistent practices among NASA centers, thereby eliminating the possible confusion encountered by contractors that deal with more than one center for Phase II contracts. In addition, the value of the cost or pricing data for SBIR Phase II contracts generally has been minimal and has been found to result in delays in awards as the small businesses often cannot provide the data quickly.

The elimination of the end date for the waiver of submission of cost or pricing data from the CCC makes NASA's waiver consistent with the one between the Department of Defense and the CCC. The current rule states that the CCC will provide assurance of the fairness and reasonableness of the proposed prices. This has been interpreted by some to mean that no additional analysis is necessary. The revised rule clarifies that, while this assurance is to be relied on, it may be necessary to obtain information other than cost or pricing data from subcontractors to the CCC in order to perform any required proposal analysis, including a technical analysis and a cost realism analysis.

Impact**Regulatory Flexibility Act**

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected NFS subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.*

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose recordkeeping or information collection requirements, or

collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1815

Government procurement.

Tom Luedtke,

Acting Associate Administrator for Procurement.

Accordingly, 48 CFR Part 1815 is amended as follows:

PART 1815—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR Part 1815 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

2. Section 1815.403-170 is revised to read as follows:

1815.403-170 Waivers of cost or pricing data.

(a) NASA has waived the requirement for the submission of cost or pricing data when contracting with the Canadian Commercial Corporation (CCC). This waiver applies to the CCC and its subcontractors. The CCC will provide assurance of the fairness and reasonableness of the proposed price. This assurance should be relied on; however, contracting officers shall ensure that the appropriate level of information other than cost or pricing data is submitted by subcontractors to support any required proposal analysis, including a technical analysis and a cost realism analysis. The CCC also will provide for follow-up audit activity to ensure that any excess profits are found and refunded to NASA.

(b) NASA has waived the requirement for the submission of cost or pricing data when contracting for Small Business Innovation Research (SBIR) program Phase II contracts. However, contracting officers shall ensure that the appropriate level of information other than cost or pricing data is submitted to determine price reasonableness and cost realism.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**48 CFR Parts 1842 and 1852****Application of Earned Value Management (EVM)**

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.